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HB 2170 – Frequently Asked Questions

2013 HB 2170, enrolled version

Legislative Summary of HB 2170

*References to the 2013 Supplement of the Kansas Statutes Annotated (K.S.A.) are made with the assumption that these sections will appear as amended in the enrolled version of HB 2170 when they are published later in the year.

1) How do the graduated sanctions work?

Upon the first felony probation violation, the violator will be subject to a "quick dip" intermediate jail sanction pursuant K.S.A. 2013 Supp. 22-3716 (c)(1)(B). The quick dip can be imposed as two-day or three-day consecutive periods, not to exceed 18 total days confinement. There is no limit to how many times a quick dip sanction may be imposed. See page 12 of HB 2170.

Court Services Officers or Community Corrections Officers also have the authority to impose a "quick dip" sanction pursuant to K.S.A. 2013 Supp. 21-6604(s) or (t) so long as the sentencing judge has not withheld this authority at sentencing and the offender has not refused to waive the right to a violation hearing. See page 7 of HB 2170.

After a quick dip sanction has been imposed by either the court or the CSO or CCO, the court may impose a 120-day sanction under K.S.A. 2013 Supp. 22-3716 (c)(1)(C) or a 180-day sanction under (c)(1)(D), up to one time each, for subsequent felony probation violations. See pages 12-13 of HB 2170.

After a prison sanction has been imposed pursuant to K.S.A. 2013 Supp. 22-3716 (c)(1)(C), (c)(1)(D), or both, the court may then revoke probation pursuant to (c)(1)(E). The court may also revoke pursuant to K.S.A. 2013 22-3716 (c)(8), regardless of any prior sanctions imposed, if the probationer commits a crime or absconds from supervision. The court may also use the override provisions of K.S.A. 2013 Supp. 22-3716(c)(9) to bypass the graduated sanction progression and revoke the violator's probation at any time if the court sets forth with particularity the reasons for finding that public safety will be jeopardized or the welfare of the offender will not be served by another sanction. See pages 12-14 of HB 2170.

2) Can a court impose both a 120 and 180-day sanction?

Yes. The sanctions in K.S.A. 2013 Supp. 22-3716 (c)(1)(C) and (c)(1)(D) can be imposed upon felony probationers one time each, in any order, during a single probation sentence. These sanctions cannot be imposed at the same time or "stacked" to create a 300-day sanction.

After one prison sanction under (c)(1)(C) AND one prison sanction under (c)(1)(D) have been imposed, the court must then revoke probation pursuant to (c)(1)(E).

3) If the Court Services or Community Corrections Officer wants to impose a "quick dip" but the probationer refuses to waive the hearing, can the court assign a 120-day or 180-day prison sanction for a first offense?

No. If the court has not withheld the authority of the Court Services Officer or Community Corrections Officer to impose sanctions, the CSO or CCO may require the probationer to serve a "quick dip" jail sanction under K.S.A. 2013 Supp. 22-3716(c)(1)(B), unless the probationer refuses to waive the hearing. But if the probationer refuses to waive the hearing, the CSO or CCO cannot impose the "quick dip" sanction without further court order and the court will be limited to imposing the quick dip sanction for the first violation. See K.S.A. 2013 Supp. 21-6604(s) and (t) on page 7 of HB 2170 and K.S.A. 2013 Supp. 22-3716(c)(1)(B) on page 12 of HB 2170.

The court may use the override provisions of K.S.A. 22-3716 (c)(9) to bypass the graduated sanction progression and revoke the violator's probation, but the court may not use (c)(9) to bypass the "quick dip" and go directly to the 120-day, (c)(1)(C), or 180-day, (c)(1)(D), sanction. See pages 11-14 of HB 2170.

4) Will judges be able to do anything to withhold the authority of Court Service Officers and Community Corrections Officers to administer "quick dips" in cases that were sentenced prior to July 1, 2013?

No. The presumption is that if the authority hasn't been withheld at sentencing, CSOs and CCOs will have the ability to impose quick dips even though the district court did not have the opportunity to withhold it prior to July 1, 2013. See page 7 of HB 2170, K.S.A. 2013 Supp. 21-6604(s)(1) and (t)(1).

For crimes committed on and after July 1, 2013 there will be a specific box on the Journal Entry of Judgment that must be marked if the district court wishes to withhold this authority.

5) Will violation sanctions completed prior to July 1, 2013 count towards the new graduated sanctions?

No. The provisions authorizing graduated sanctions are new law and do not apply to previous sanctions ordered prior to July 1, 2013. Therefore, a sanction ordered prior to

July 1 will not count as a "quick dip", 120-day or 180-day sanction under K.S.A. 2013 Supp. 22-3716 (c)(1)(b), (c)(1)(C) or (c)(1)(D).

The district court may always use the "override" provision of K.S.A. 2013 Supp. 22-3716(c)(9) to revoke probation citing with particularity the offender is a public safety risk or that the welfare of the offender will not be served by such a sanction.

6) Are the new graduated sanctions applicable for violation hearings conducted on July 1, 2013?

Yes. The current version of K.S.A. 2012 Supp. 22-3716 already provides the court broad authority to impose a sentence of any time period up to the original length of the sentence. After July 1, 2013 the court now has more tools in the form of additional graduated sanctions that are more specific, yet still within the court's preexisting authority. For this reason, retroactivity concerns are alleviated.

However, the only sanction that will be available for first time probation violators is the "quick dip" jail sanction in K.S.A. 2013 Supp. 22-3716 (c)(1)(B), regardless of sanctions imposed prior to July 1, 2013. See Question #5 above.

7) Do the new graduated sanctions apply to felony DUI offenders and to nongrid felony DV cases?

No. All of the nongrid offenses, including DUI, K.S.A. 2012 Supp. 8-1567; Test Refusal, K.S.A. 2012 Supp. 8-1025; Domestic battery, K.S.A. 2012 Supp. 21-5414; and Animal Cruelty offenses in K.S.A. 2012 Supp. 21-6412 and 21-6416 have their own specific statutory penalties and supervision requirements which would apply in lieu of new sanctions in K.S.A. 2013 Supp. 22-3716. These offenses do not have underlying prison sentences, so the provisions of the new graduated sanction system cannot apply.

8) Does presumptive discharge pursuant to K.S.A. 2013 Supp. 22-6608(d) apply to the initial 12 months of probation only?

No. The compliance period does not have to be the initial 12-month probation period. Once an offender has been compliant for 12 consecutive months, regardless of the length of probation, presumptive discharge is applicable.

For example:

> An offender with a 24 month probation sentence was not compliant for the first 6 months, but then became compliant after month six. At the end of month 18 the offender would be eligible for presumptive discharge.

Please note that presumptive discharge pursuant to K.S.A. 2013 Supp. 21-6608(d) is different from supervision termination pursuant to K.S.A. 2012 Supp. 21-6608(a).

K.S.A. 2013 Supp. 21-6608(d) presumptive discharge applies only to low risk offenders who meet the statutory criteria, while K.S.A. 2012 Supp. 21-6608(a) supervision termination can apply to any offender at any time. See pages 9 and 10 of HB 2170.

9) Does presumptive discharge apply to people who have been in compliance for 12 months on July 1, 2013?

Yes. Presumptive discharge from probation pursuant to K.S.A. 2013 Supp. 22-6608(d) will go into effect immediately for people that have complied with probation for 12 months or more, have paid all restitution and have a risk assessment of low risk. See K.S.A. 2013 Supp. 22-6608(d), page 10 of HB 2170.

Also note that there will be a new early discharge mechanism for people serving postrelease supervision. Offenders on postrelease will be able to petition the Prisoner Review Board for release pursuant to K.S.A. 2013 Supp. 22-3717(d)(2), but there is no presumption of release and no mandatory time period of supervision compliance for this type of release. See K.S.A. 2013 Supp. 22-3717(d)(2), page 17 of HB 2170.

10) Whose responsibility is it to notify the Court when a felony probationer is eligible for the presumptive discharge provision?

The probation officer would notify the court. Some type of notice to the parties is also appropriate in the event there is an objection to the presumed discharge.

11) Until the Kansas Sentencing Commission adopts standard LSI-R cut off scores, is the local judicial district's definition of low risk applicable?

Yes. Local judicial district rules are controlling until statewide cutoffs are adopted by the Sentencing Commission.

12) Should a Presentence Investigation Report writer mark the postrelease supervision box on the PSI for a SB 123 case?

Yes. Offenders whose crime of conviction was committed on or after July 1, 2013 will serve a period of postrelease after revocation or prison sanction and completion of the underlying sentence from SB 123 treatment.

But keep in mind that this provision is prospective as postrelease does <u>not</u> apply to SB 123 revocation cases when the crime of conviction was committed prior to July 1, 2013. See K.S.A. 2013 Supp. 21-6604(n)(2), page 5 of HB 2170; and K.S.A. 2013 Supp. 22-3716(f), page 14 of HB 2170.

Similarly, offenders who successfully complete the SB 123 program will <u>not</u> serve a period of postrelease supervision. See K.S.A. 2012 Supp. 21-6824.

13) Will KDOC need the usual commitment packet from the Court for the 120-day and 180-day sanctions? If so, will time served in jail while waiting for the packet to be completed and received by KDOC count towards the sanction?

Yes, the KDOC will need the commitment packet. Representatives from KDOC have indicated that time spent in the local jail awaiting transport will count towards the length of the prison sanction.

14) When imposing a quick dip, how does the concurrence of the Chief Court Services Officer or Community Corrections Director need to take place?

Before a CSO or CCO may impose a quick dip sanction, they must have the authorization of the Chief CSO or Community Corrections Director. As of now it is up to each judicial district to develop their own workable system. Written authority in some form would most likely be a preferred method for documentation purposes. See K.S.A. 2013 Supp. 21-6604(s) and (t) on page 7 of HB 2170.

15) Will a hearing be required to impose a 120-day or 180-day prison sanction or probation revocation?

Yes, a hearing will be required. See page 11 of HB 2170. The only violation sanction that does not require a hearing is the quick dip sanction imposed by the CSO or CCO when the probationer waives the right to a hearing.

16) Does the 18 day cap for the "quick dip" count against the 60 days that the court can impose under current law?

No. Felony probation sentences and subsequent revocations can include 60 days jail time pursuant to K.S.A. 2013 Supp. 21-6604(a)(3) as a condition of the probation. See page 1 of HB 2170. This provision is imposed as a sentencing provision. The graduated sanctions available in K.S.A. 2013 Supp. 22-3716(c) are imposed not for sentencing but for violations of probation and therefore should be considered separate for purposes of this question. See page 11 of HB 2170.

17) Are interstate compact cases being supervised in another state eligible for the jail and prison sanctions?

Technically, yes. But this scenario would seem to only apply if the offender was sent back to Kansas. Otherwise, an offender in another state is treated under the laws of the host state. The district court could assign the offender to a violation sanction in KDOC if the offender is returned to Kansas supervision. This is due to the concern that after serving a violation sanction in Kansas, the Interstate Compact may not allow the return of the offender to the other supervising state for continued supervision.